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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,725	08/25/2003	John F. Duff	BTO135USPT02	2168
23403	7590	07/27/2007		
SHERRILL LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205			EXAMINER LIN, JASON K	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 07/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/647,725	Applicant(s) DUFF ET AL.	
	Examiner Jason K. Lin	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-18, 25 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-18, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is responsive to amendment of application No. 10/647,725 filed on 06/05/2007.

Claims 6, and 19-24 have been cancelled. **Claims 1-5, 7-18, 25 and 26** are pending and have been examined.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/05/2007 has been entered.

Response to Arguments

3. Applicant's arguments with respect to claim **1-5, 7-18, 25 and 26** have been considered but are moot in view of the new ground(s) of rejection. Although a new ground of rejection has been used to address additional limitations that have been added to the claims, a response is considered necessary for several of applicant's arguments.

Regarding amendment item 2.0, Applicant asserts that Del Castillo, US 6,742,188, discloses a method and system for addressed-based control of a device in

Art Unit: 2623

concatenation with programming presented by a video signal, using control data embedded within the video signal. Applicant also asserts that Del Castillo, further discloses a system that can include a plurality of devices under common control by a central control device by a user.

Applicant further asserts that Del Castillo does not disclose, teach or suggest selective activation of individual controlled devices based on selection criteria input into each of the controlled devices.

Although applicant's arguments are understood, they are not persuasive for the following reasons:

Del Castillo teaches (Col 7: lines 57-60) that a controller uses control data to operate one or more controlled devices. Del Castillo further teaches (Col 8: lines 8-11) that the controller may be an intelligent system that is operative to generate, select, and combine video and control data from a number of sources, in response to user input or other control signals. The controller is established to be a computer system (Col 7: lines 11-15; 20 – Figs. 1&2). Del Castillo also discloses (Col 10: lines 25-28) that the computer operations are performed in conjunction with various inputs provided by a human operator or user that interacts with the computer.

Each individual device is activated and controlled by control signals and selection criteria that is input into each device via the control signal (Col 8: lines 4-11).

For the reasons stated above, the amended claims notwithstanding, rejection of the application is maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1-5, 7-12, 14-18, 25, and 26** are rejected under 35 U.S.C. 102(e) as being anticipated by Del Castillo (US 6,742,188).

Consider **claim 1**, Del Castillo teaches a device for providing human perceptible indicia (Col 8: lines 61-66 teach each controlled device includes a speech synthesizer, speaker, servo motors, and may include light and heat sources. *These are all human perceptible characteristics*) in synchronization with a video program (Col 6: lines 48-55), the device comprising:

(a) a base station (90, Fig.6), housing:

(i) a communication port adapted to receive a video input signal of the video program (video data detector 91 – Fig.6; Col 15: lines 26-28);

(ii) a central processing unit in communication with the communication port (Col 15: lines 22-26 teaches that the components of the wireless modulator 90 – Fig.6 {base station} may be implemented in hardware, software, or a combination of hardware and software. *In the case of software or combination of hardware and software, a processor is*

used. Col 15: lines 46-51), said central processing unit detecting data embedded in the video input signal (Col 15: lines 26-36); and

(iii) a wireless transmitter module in communication with the central processing unit (RF transmitter 96, antenna 98 – Fig.6; Col 15: lines 22-26);

(b) a plurality of wireless receiver units remote from said base station (Col 7: lines 2-6, 13-15, 30-35 teaches multiple wireless receiver units. Col 8: lines 46-51 teaches the many different types of devices that can be used with this system);

(c) an interface device in individual communication with each wireless receiver unit for allowing user input of selection criteria (Col 12: lines 18-20 teaches receiving user input via a computer 20 - Fig.2. Col 8: lines 8-11 teaches that the controller may select control data from user input and send control data to control each individual devices, where various end effectors are actuated in a particular controlled device as taught in col 9: lines 2-9. Col 7: lines 11-15. *Via the controller, the computer communicates with each individual device, controlling each device's functions*); and

(d) indicia attached to each wireless receiver unit and in communication with the central processing unit (Col 15: lines 22-26 teaches that the components of the wireless modulator 90 – Fig.6 may be implemented in hardware, software, or a combination of hardware and software. Col 7: lines 13-15, 20-22 teaches that the wireless modulator communicates with and controls each device. Col 9:

lines 1-9 teaches in response to the control data from the controller, servos are actuated, input to speech is provided, and any of the end effectors of the device are actuated);

(e) wherein said central processing unit transmits an activation signal through the wireless transmitter module to the wireless receiver units upon detection of the data embedded in the video input signal (Col 15: lines 26-51), and the indicia attached to each wireless receiver unit selectively activated based upon selection criteria input by a user (Col 8: lines 8-11; Col 9: lines 5-9; Col 16: lines 35-46).

Consider **claim 2**, Del Castillo teaches a storage device having a stored program in communication with said central processing unit, said stored program executing upon detection of the data embedded in the video input signal by said central processing unit (Col 8: lines 27-40, col 9: lines 24-31 teaches programs running on a personal computer and microprocessor based systems, which are evidence of a storage device for storing these programs. Col 15: lines 22-26 also teaches that the components of the wireless modulator 90 – Fig.6 may be implemented in hardware, software, or a combination of hardware and software).

Consider **claim 3**, Del Castillo teaches a read-only-memory having a stored program in communication with the central processing unit, said stored program executing upon detection of the data embedded in the video input signal by said central processing unit (ROM 24 – Fig.2; Col 11: lines 58-60, col 16: lines 21-24. See also the rejection w/r to claim 2).

Consider **claim 4**, Del Castillo teaches a random-access-memory in communication with the central processing unit and allowing for temporary storage of instructions or data by the central processing unit (RAM 25 – Fig.2; Col 11: lines 58-60, Col 16: lines 21-24. See also the rejection w/r to claim 2).

Consider **claim 5**, Del Castillo teaches a read-only-memory (ROM 24 – Fig.2), a random-access-memory (RAM 25 – Fig.2), a storage device (hard disk 27 – Fig.2) and a bus (system bus 23 – Fig.2), each of said read-only-memory, random-access-memory and storage device communicating with the central processing unit (21 – Fig.2) through said bus (Fig.2, See rejection w/r to claim 2).

Consider **claim 7**, Del Castillo teaches wherein each said wireless receiver unit (Col 7: lines 4-6 teaches multiple receivers. Controlled device 60 – Fig.7) includes a second central processing unit (microprocessor, Col 16: lines 20-21).

Consider **claim 8**, Del Castillo teaches wherein each said wireless receiver unit includes a storage device (RX data buffer 65 – Fig.7) having a stored program (control data), said storage device in communication with said second central processing unit and executing upon detection of the data embedded in the video stream by the central processing unit of the base station (Col 16: lines 20-24).

Consider **claim 9**, Del Castillo teaches wherein said wireless receiver unit includes a read-only-memory having a stored program, said read-only memory in communication with the second central processing unit and executing upon detection of the data embedded in the video stream by the central processing unit of the base station (Col 16: lines 20-32).

Consider **claim 10**, Del Castillo teaches a random-access-memory housed in the wireless receiver unit and in communication with the second central processing unit and allowing for temporary storage of instructions or data by the second central processing unit (Col 16: lines 24-29).

Consider **claim 11**, Del Castillo teaches a read-only-memory, a random-access-memory, a storage device and a bus housed in the wireless receiver unit, each of said read-only-memory, random-access-memory and storage device communicating with the second central processing unit through said bus (Fig.2 shows the common method for interconnecting the elements of claim 11 is a system bus).

Consider **claim 12**, Del Castillo teaches wherein at least one of said wireless receiver unit includes a visual indicia (light source, col 8: lines 61-68).

Consider **claim 14**, Del Castillo teaches wherein at least one said wireless receiver devices includes an audible indicia (Col 8: lines 61-66).

Consider **claim 15**, Del Castillo teaches wherein said indicia includes a speaker (Speaker 43 – Fig.2; Col 8: lines 61-66).

Consider **claim 16**, Del Castillo teaches wherein the wireless receiver devices are toys (Col 1: lines 29-31; Col 8: lines 58-61).

Consider **claim 17**, Del Castillo teaches wherein at least one of said wireless receiver devices includes visually perceptible movement indicia (Col 11: lines 29-39).

Consider **claim 18**, Del Castillo teaches wherein at least one said wireless receiver devices includes simulated speech indicia (Col 11: lines 29-39; Col 16: lines 42-46).

Consider **claims 25 and 26**, Del Castillo teaches a system and method for providing human perceptible indicia (Col 8: lines 61-66 teach each controlled device includes a speech synthesizer, speaker, servo motors, and may include light and heat sources. *These are all human perceptible characteristics*) in

synchronization with a video program (Col 6: lines 48-55), the system and method comprising:

- (a) means for embedding data into a broadcast signal of the video program (Video data encoder 76 – Fig.8; Col 16: line 63 – col 17: line 24);
- (b) means for transmitting the broadcast signal in communication with the means for embedding data into the broadcast signal (Col 17: lines 21-32);
- (c) means for receiving the broadcast signal from the means for transmitting the broadcast signal (Col 17: lines 21-32);
- (d) means for detecting the data embedded in the broadcast signal (Col 40-63);
- (e) means for transmitting an activation signal upon detection of the data embedded in the broadcast signal (RF transmitter 96, antenna 98 – Fig.6; Col 15: lines 9-14, 26-51);
- (f) means for receiving the activation signal at a plurality of destination locations remote from where the broadcast signal was received and the activation signal was transmitted (RF Receiver 67 – Fig. 7; Col 7: lines 2-6, 13-15, 30-35 teaches multiple wireless receiver units. Col 8: lines 46-51 teaches the many different types of devices that can be used with this system);
- (g) means for receiving individually selected input selection criteria at each destination location (Col 7: lines 11-15; 20 – Figs.1&2 establishes that the controller may be a computer system. Col 12: lines 18-20 teaches a user may enter commands and information into the computer. Col 8: lines 8-11 teaches a

controller may select control data from user input and send the control data to a controlled device); and

(h) means for selectively activating the indicia at one or more destination locations in response to the data embedded in the broadcast signal based upon the user input selection criteria (Col 9: lines 1-9 teaches in response to the control data from the controller, servos are actuated, input to speech is provided, and any of the end effectors of the device are actuated. Col 12: lines 18-20 teaches a user may enter commands and information into the computer. Col 8: lines 8-11 teaches a controller may select control data from user input and send the control data to a controlled device. *The devices are activated and controlled based on the user input criteria that is sent along with the control signal*).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Castillo (US 6,742,188) in view of Yuen et al. (US 6,668,133).

Consider **claim 13**, Del Castillo teaches end effectors such as light sources on the controlled device (Col 8: lines 64-66), but does not explicitly teach said indicia includes a flashing red light.

In an analogous art Yuen teaches, an indicia includes a flashing red light (332 – Fig. 15; Col 21: lines 47-50 teaches a flashing red light emitting diode that will flash when a signal is sent).

Therefore, it would have been obvious to a person of ordinary skill in the art to modify Del Castillo's system to include a flashing red light, as taught by Yuen, for the advantage of providing a more noticeable indicator to a user in order to grab their immediate attention. This would prove beneficial to both hearing, and hearing impaired subscribers for various applications such as indicating to them an alert of pending advertising, weather warnings, emergency broadcasts and program related events such as a two minute warning in a sports program.

Cited Prior Art

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ranta et al. discloses a toy that performs behavior defined by control data that is encoded in the received video signal in (US 2005/0204400 A1).

Koplar et al. discloses a hand-held device with a visual display and series of lights that presents information to the user upon receiving auxiliary data from the video signal in (US 2002/0112250).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason K. Lin whose telephone number is (571)270-1446. The examiner can normally be reached on Mon-Fri, 9:00AM-6:00PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on (571)272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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07/17/2007


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